

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

JOHN A. CORDOVA,)
)
)
Petitioner,)
)
)
v.) Civil Action
)
 No. 06-3029-CV-S-RED-H
JOSEPH E. GUNJA, Warden,)
United States Medical Center,)
)
)
Respondent.)

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate Judge for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate Judge has completed his preliminary review of the petition herein and has submitted to the undersigned a report and recommendation that petitioner be denied leave to proceed in forma pauperis and that the petition filed herein for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the magistrate judge, in which he reasserts the allegations of his original petition.

A review of the files and records in this case establishes that the petitioner has failed to exhaust administrative remedies. See *Willis v. Ciccone*, 506 F.2d 1011, 1015 (8th Cir. 1974). Petitioner's allegations with regard to his issue of identity theft and the calculation of his sentence

are not so unusual as to justify the bypassing of those remedies. Petitioner was committed for mental health treatment under the provisions of 18 U.S.C. § 4245, *United States v. Cordova*, Case No. 01-3038-CV-S-1. In that case, his treating psychologist concluded that petitioner does not have heart failure or a heart attack for which he requires treatment in the form of a heart transplant, but rather that this belief is part of his delusional system. Petitioner has not alleged that any Medical Center employees acted with deliberate indifference to a serious medical care need. *Estelle v. Gamble*, 429 U.S. 97, 105 (1976).

Based on the files and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate Judge are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, CONSIDERED and OVERRULED. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis; it is further

ADJUDGED that the petition for writ of habeas corpus filed herein be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
RICHARD E. DORR,
United States District Judge

Date: January 31, 2007